Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

CARLTON ROBINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I GIVEN THE IRRECONCILABLE CONFLICTS IN THE TESTIMONY PROVIDED BY THE TWO ARRESTING OFFICERS ON THE DISPOSITIVE PROBABLE CAUSE ISSUES, CAN THE COURTS BELOW ARBITRARILY REJECT THE PERFECTLY PLAUSIBLE AND UNASSAILABLE TESTIMONY OF THE ACCUSED?

II WHETHER A REVIEWING COURT CAN, WITH IMPUNITY, IGNORE THE FACT THAT THE ALLEGED TRAFFIC OFFENSE SUPPOSEDLY OBSERVED BY THE OFFICERS COULD NOT POSSIBLY HAVE OCCURRED AS DESCRIBED?

PARTIES TO THE PROCEEDING

The Petitioner is Carlton Robinson.

The Respondent is the United States of America.

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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, Carlton Robinson, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States District Court for Northern District of Ohio, which judgment became final on October 17, 2003, when the United States Court of Appeals for the Sixth Circuit affirmed the lower Court's decisions. The time for the filing of this Petition was extended, by order of this Court to February 14, 2004.

OPINIONS BELOW

The Opinion of the Sixth Circuit Court of Appeals affirming these convictions, against which this Petition is directed, was issued on October 17, 2003. This Opinion is designated (**App. 1**) in the Appendix to the Petition.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment by the Court of Appeals was finalized on **October 17, 2003**, when the United States Court of Appeals for the Sixth Circuit denied further Appellate review. The jurisdiction of this Court is invoked under **Title 28 U.S.C., § 1257(3)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principal provisions of the United States Constitution involved in this case are the search and seizure clause of the Fourth Amendment and the self-incriminating clause of the Fifth Amendment. The pertinent text of these reads as follows:

Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V:

"No person ... shall be compelled in any criminal case to be a witness against himself...."

STATEMENT OF THE CASE AND FACTS

Carlton Robinson, the Petitioner herein, appeals from the judgment entered in the wake of his conditional plea of guilty **(R. 17)**. The plea was to the drug possession charge made herein on the basis of his asserted possession of a quantity of drugs that was found in his car following a routine traffic stop. It also included a guilty plea to his illegal possession of a firearm **(ibid)**.

Certain critical segments of the evidence in this case are beyond dispute. It cannot be denied that Carlton Robinson, the Petitioner herein, while a motorist in the City of East Cleveland, Ohio, made a traffic stop at the intersection of Euclid Avenue (a boulevard) and Northfield Street. Indeed, it cannot be disputed that Robinson stopped for the Euclid Avenue traffic and signaled for a left turn onto Euclid (which here means he turned eastbound onto Euclid Avenue **(Tr., pp. 19-20)**. Since he was intending to continue south on Chapman, which formed a jogged (or "T" intersection) relationship with Northfield for traffic going north and south in relation to Chapman, it was necessary for him to almost immediately signal for a right turn so as to proceed onto Chapman. (See **Defense Exhibit "D"**)

Also, the defense evidence showed the police car, which was operated by officer Adkins, was at the stop sign *while on the next street west* (*i.e.,* Page Street) of Northfield. The officer's car was likewise poised to turn onto Euclid Avenue - -

albeit from the opposite side of Euclid Avenue; hence, his turn was a right turn which resulted in the police car also traveling eastbound on Euclid Avenue. Simply put, the Petitioner testified he did not commit any traffic offenses (**Tr., pp. 78-79**) and was at all times fully aware of the presence and the location of the police car (**ibid**). Also, as shown below, the testimony of the two officers in this car is truly irreconcilable. This is especially so when their versions are compared with each other. Indeed, when their testimony is pitted against Robinson's testimony, the fact that only officer Adkins says the police car did not emerge from Page onto Euclid exposes Adkins' testimony on this point, as well, to have been wilfully contrived.

According to officer Adkins, the Petitioner's car came within a foot of their car and indeed almost struck his police car (**Tr., pp 5-6**). All this he says occurred as the Petitioner was making his turns (**id., p. 6**). This offense (almost hitting the police car) was the offense that primarily led to the Petitioner's car being stopped.[1] Most significant here is the following unequivocal testimony:

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[1] The officer said nothing about a failure to signal a turn in his police report (**tr., p. 125**). This is not unusual as police officers are known for using their imagination to fill gaps in their evidence. As shown below, what was said in Court was that the Petitioner failed to signal a turn, and he made the turn *from* "the high speed lane instead of the curb lane" (*post*, p. 5, **tr., p. 6**). In so doing, it was said that Petitioner's car came within a foot of hitting the police cruiser (**ibid**). Clearly there has to be a reason why this testimony conflicts with what was written in the original police report (**tr., p. 39**) *and* why the other officer in the police car (officer Potchatek) saw none of this. Surely this officer would have been aware of any evasive action with reference to the near miss; hence, the comment should have related to that fact rather than the Petitioner's failure to signal. The near miss would have been an act of reckless driving (**R.C. of Ohio, §4511.20**).

Q. Officer Adkins, isn't it a fact that your car was ... stopped at Page and Euclid pointed north - -

A. No, sir.

Q. - - and you turned onto Euclid Avenue?

A. No, sir.

Q. *You didn't come off of Page*?

A. *No, sir.*

* * *

Q. You didn't come off of Page onto Euclid?

A. No, sir.

Q. Did you see the defendant when he made a traffic stop on Northfield before he turned onto Euclid Avenue?

A. Yes, I did, sir.

* * *

Q. *Would there have been anything that prevented him from seeing your police car*?

A. *No, sir.*

Q. And I take it it was a conspicuously marked police car; that is to say, it has "police" written on it?

A. Yes, sir, fully marked cruiser.

Tr., pp. 17-18.

Likewise critical here, because it bears so heavily on the officer's credibility and the creditworthiness of his evidence, the Record shows that when asked on direct examination what traffic violations did he observe, it was at this point said to have been "*no turn signal*, and a violation of turning right ... from the high speed lane instead of the curb lane" **(id., p. 6)**. (Emphasis supplied.) Also consider as critical to this

discussion the further testimony provided during officer Adkins' cross-examination. Here the Record shows:

Q. In other words, in your report you put that as you were traveling east on Euclid you saw ... the defendant's car also traveling east on Euclid and *you observed that it had temporary tags on it?*

A. *Yes.*

Q. Right. Now, *so that means you had to be behind it in order to see the tags.*

A. *Yes, sir.*

Q. Right. But it is your testimony that although you were in a conspicuously marked police car, and ... [it's a short] distance from Northfield to Chapman...

A. Right.

Q. *So although he's going a short distance to make a right turn, he's speeding, and you caught up with him just enough to see it was a temporary tag, and he almost hit you*?

A. *. . . I did not testify that he was speeding.*

Q. I didn't say - - *I'm asking you, was he speeding*?

A. *No.*

Q. Well, then you had to be pretty close to recognize it was a temporary tag - -

A. Yes, sir.

Q. - - before he made his turn.

A. Yes, sir.

Q. *So you had to catch up with him.*

A. *No, sir.*

Q. No. But nonetheless, *although this is a police car,*[2] *he almost hit you*?

A. *Yes.*

Id., pp. 22-23. (Emphasis supplied.) Also see, **id., p. 28**.

Still another segment of officer Adkins' testimony becomes truly significant when compared with the testimony isolated above. What emerges when these further segments of officer Adkins' evidence are juxtaposed (to the above quote) is the irrepressible fact that not only are the internal inconsistencies in his testimony overwhelming, they expose the entirety of his testimony as so lacking in creditworthiness as to be beyond belief. Further, there is no way any of his versions can be reconciled, in their key components, with other unchallengeable testimony. Some of the testimony referred to was provided by the other officer in the car with Adkins.

Indeed, contrary to officer Adkins testimony,[3] this officer categorically admitted they "did turn off a side street onto Euclid and start going east" **(tr., p. 103)**. While this officer also agreed that "speed was not a factor" **(id., p. 105)**, it is clear still another segment of this officer's testimony bears on the dispositive issue here. Specifically the Record shows officer

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[2] Several things are significant about the officer's testimony he was almost hit. Other than those argued elsewhere, is the fact that no reference to this being so is made in the officer's report (written before he became aware of the weakness of his asserted reasons for the stop). Also this officer's testimony was that the Petitioner's car came close to hitting the police car. As put by this officer, Robinson's car at one point was "less than a foot" from the police car **(id., p. 6)**.

[3] Contrary to officer Potchatek's testimony shown above, *officer Adkins denied coming off a side street* (*ante*, p. 4). This is significant because the Petitioner says he saw the police car . . . before and as he turned onto Euclid Avenue. **(Tr., pp. 78-79.)**

Potchatek testified as follows:

Q. And according to you, Officer Adkins had told him that he had failed to signal before he turned onto Chapman. You heard him tell [Robinson] that?

A. *I did not hear Officer Adkins state anything to the driver before he got him out of the car.*

Q. But *Adkins had told you that the offense that was committed was a failure to signal for a right turn going onto Chapman.*

A. Correct.

* * *

Q. And certainly if [Robinson] had a driver's license, all that would have happened would have been they would have plugged it into the computer, found out it was owned by Action Motors, or whatever that name; and he had paperwork showing that's who sold it to him, and he had a 30-day tag which tells you that the official title simply hasn't been issued. That's what that tells you, isn't it?

A. Uh-huh.

Q. And you can put his name and Social Security Number into the system, and it would have come back whether or not he had a driver's license?

A. Correct.

* * *

Q. Yes. So you're saying that although the defendant had been told that he was going to get a ticket for a traffic signal violation, and the defendant knew that he had a driver's license as was verified by the police, and he had all the paperwork relative to the car, you said the defendant felt he was going back to prison because he had a traffic violation?

A. I cannot say what the driver felt at that time. *What I can say is he did not have his driver's license on him,*[4] *and for officer safety is why Patrolman Adkins brought him back to the vehicle. . . .*

Tr., pp. 109-110.

As put by the Petitioner (in testimony that not only makes all the sense in the world, since clearly he was fully aware of the contraband in his car), what happened was:

A. I was stopped at the stop sign. I spotted a police car parked at a stop sign on Page Avenue.

I had my left turn signal on. I turned left....

Q. Why were you being careful?

A. Because I saw the police car stopped at Page Avenue.

Q. All right, go ahead.

A. I got in the first lane, the first lane coming from Northfield, turned my left signal off automatically from the steering wheel.

I turned my right signal on. I moved over to the right lane. I kept my right signal on and turned right on Chapman Avenue.

Q. When did you notice that the police were interested in you?

A. When I turned on Chapman Avenue they put their

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[4] Officer Potchatek, of course, does not tell us how he came to know Robinson "did not have his driver's license on him" (**ibid**). The point here being, Potchatek had to have been given this asserted explanation by Adkins. And, the facts show this could only have happened after the fact of Robinson's arrest and actual incarceration.

lights on.

Q. What happened?

* * *

A. ... The officer walked up to the car with his hand on his gun, and he told me to step out of the car, and grabbed my shirt, because my window was all the way down. He said, "Step out of the car."

Q. Did you have any conversations about a driver's license?

A. I told him I had my license. I said, let me look for my license, but I have - - I'm trying to show him other paperwork I have. **Tr., pp. 78-80.**

Most significant here is a fact admitted by officer Adkins. It shows that indeed the Petitioner's driver's license was in the car. Specifically Adkins testified he would not dispute that *all* the documents related to the car were still in the car when it was retrieved by the defense "as late as last week" **(tr., p. 31)**. It is this fact that renders pathetic what is exposed in the following segment of testimony by this officer:

Q. ...you don't [automatically] lock them all up, do you, if they tell you "I have a license"? Gee, some lady says "I changed pocketbooks" or a gentleman says that "I don't have my wallet with me, but I do have a driver's license, my Social Security is this," and I mean that happens, doesn't it?

A. Yes.

Q. Right. And you don't lock those people up, do you?

A. No.

Q. What you do, you put their Social Security Number, which is the registration number from our driver's

license, you put that into your computer, and if it comes back a certain name then you ask the person to give you some data that relates to that name to verify that you're talking to the right person?

A. Yes, sir.

Q. Wouldn't you do that?

A. Yes, sir.

Q. Right. Why didn't you do that in connection with Mr. Robinson?

A. Due to the fact the vehicle came back with no expiration, it came back to a rental place out of Eastlake, I don't recall the exact ownership - -

Q. All right. Did it come back to Action Motors, 29911 Euclid Avenue, Wickliffe, Ohio?

A. Possibly. I mean, I can't remember at the time right now.

Q. And didn't the defendant attempt to tell you that he had all the paperwork related to the car, which turns out to be the inspection certificate, bill of sale for the car, authorization to use that license plate number, and et cetera? *He didn't try to make that explanation to you*?

A. *No, sir.*

Q. Your testimony is that all of a sudden, although the defendant had a driver's license, he decided to attack you?

A. No, sir, he did not attack me.

Q. Well, he decided to run away?

A. Yes, sir. **Tr., pp. 32-33**. (Emphasis supplied.)

Also with reference to the asserted observations made by officer Adkins, it should suffice to note (as **Defense Exhibit "D,"** shows) the distances between Northfield and Chapman would not have permitted any type of eastbound *travel* on Euclid Avenue. Indeed, the turn onto Chapman had to be commenced immediately. With this being so, it is contended that there was not enough time for the officer (while in a car that was behind Robinson's car) to see the temporary tag (**tr., p. 22**), and then almost be hit by Robinson's car before (or during) its turn onto Chapman (**ibid**). Consider on this point these questions put by the government on re-direct examination:

> Q. So my question is, today as you sit here, do you know when you first observed that there was not the number but a temporary tag on this car rather than a regular license plate?
>
> A. Yes, ma'am.
>
> Q. When did you notice that?
>
> A. *When the gentleman was in the high speed lane, overtook my vehicle, and then made a right turn.*

Id., pp. 41-42. (Emphasis supplied.)

Other critical segments of Adkins' discursive, and obviously contrived, testimony, when considered in the light of his original police statement, should be sufficient to carry the day for the Petitioner. The point here being contended for is well made when the following additional segments of Adkins' testimony are considered:

(1)

> ... my unit was traveling Euclid *eastbound passing across Northfield, and this gentleman was on Northfield turning left onto Euclid*. . .. [H]e entered the high speed lane, and then in a maneuver he swerved

over to the right going up to Upper Chapman, *almost striking my police car.* **Tr., p. 5.**

(2)

Q. When did you notice that [the car had a temporary license plate]?

A. *When the gentleman was in the high speed, overtook my vehicle, and then made a right turn.*

Q. All right. And this is the temporary tag on the back of the vehicle.

A. Yes, ma'am. **Tr., pp. 41-42.** (Emphasis supplied.)

Still another segment of officer Adkins' testimony cannot be squared with that of the other credible evidence provided by the other two eyewitnesses. Indeed it is worth repeating that officer Potchatek testified that officer Adkins said nothing about their car almost being hit, and had only stated he had been told, at Adkins, the car did not signal for a right turn. Query: why is it that this officer obviously did not likewise see this asserted violation that occurred as their car "was able to catch up with him before he had gone ... [this] very short distance on to Chapman" **(Tr., p. 104)**. Consider also, in light of the relative distances with which we are dealing, that Potchatek is clear about one thing - - Robinson's vehicle was seen by him to be at least "a couple car lengths in front"[5] of

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[5] Granted there seems clearly to be no Supreme Court case that has addressed the issue referred to here, *i.e.,* that there is a problem when the testimony of a police officer, particularly as to critical events, defies logic and common sense - - the case here. See, as dealing specifically with the "testilying" problem we contend is present here in all its vigor, **Mark Curriden, *"Secret Threat To Justice,"* National Law Journal 1, 29 (February 20, 1995)** and **Mitchell Zuckoff and Gerald O'Neill, *"Testilying Reporting Plan Set Up,"* Boston Globe, December 27, 1997.**

their "plainly marked police car" **(id., pp. 105-106)** *when he started his turn onto Chapman*. Also, it should be noted this officer tells us that *before* they got out of their car they "notified dispatch of the traffic stop, the license plate, and the location" **(id., p. 107)**. . . .[A]ccording to this witness "officer Adkins [did not] state anything to the driver before he [Adkins] *got him out of the car*" **(id., p. 109)**. (Emphasis supplied.) Here it is worth repeating, officer Potchatek also testified the reason officer Adkins "brought him back to the[ir] vehicle" was "for the officer's safety" **(id., p. 110)**.

Of course, there is no dispute that this training officer was able to get Robinson out of the car. Here officer Adkins claimed he had to do this because Robinson did not locate his identification **(tr., p. 30)**. Robinson, on the other hand, testified he repeatedly told the officers he had identification that was later found in the car by the police along with all the necessary paperwork required by State law for motorists to possess. (See **Tr., pp. 80, 82-83 and 88.)**

The significance of the fact that officer Adkins was training officer Potchatek cannot be overlooked. Clearly Adkins was using Carlton Robinson as an example of how to rough up people and then blame them for having caused the resulting consequences to themselves. Also, it was (and is) contended that officer Adkins was also guilty of having *profiled* Carlton Robinson. This apparent belief that he was a drug dealer is what dominated this officer's actions toward the Petitioner.

Indeed this precise argument was made by counsel to the trial Judge **(tr., pp. 117-119)**, yet it apparently did not deserve even a comment. The point being, there was no way this case

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Also see the **1194 Mollen Report**, summarized in a 1999 NACDL press release (*post*, p. 34).

should have been resolved without the Court dealing with the original stop issue.

It should also be understood that, in our judgment, officer Adkins' motives for taking Petitioner out of the car were not said to be because he had a suspicion that he was armed and dangerous (**tr., pp. 31-32**). The significance of this awesome fact is augmented by this officer's failure to even ask the Petitioner, as officers routinely do, whether there were any weapons in the car.

Here, of course, in applying a reasonableness inquiry in this case we should look first at that side of the balance sheet which bears "the officer's interest in taking the actions that he did." **Pennsylvania v. Mimms, 434 U.S. 106, at 109 (1977)**. Thus it is important to realize that officer Adkins never testified to facts showing he reasonably suspected that Robinson was armed and dangerous. With this being so, and despite the lack of any findings to support this thesis, the government in lieu of any such reasonable suspicion has obviously assumed that anytime an officer makes a traffic stop he faces the sort of danger that allows him to act as these officers did. Obviously this view is at odds with the prevailing notions that are applicable in these situations. A fair distillation of these cases seems clearly to hold that in considering whether specific police conduct was reasonable, the Courts will focus on the context in which the conduct occurred and this they will do in order to identify whatever particular risks, if any, were posed to the officers' safety.

It is significant here that we are not dealing with the beginning stages of a traffic stop where it could be said the officer was confronted with "the inordinate risk[s] that exists whenever an officer approaches "a person seated in an automobile" **Mimms, 434 U.S., at 110-111**. Rather, the focus here must be on any risk Adkins and his partner were arguably

exposed to when he *took* Robinson (as the evidence shows was the case) out of his vehicle.

On this point, the evidence is clear. Carlton Robinson (**tr., pp. 79-80**) and officer Potchatek, the other officer present (**tr., pp. 101 and 110**), both say Robinson was forcibly removed from the car. With this being so any reliance by the government on cases such as **Mimms** and **Wilson**, cited elsewhere, would be misplaced. This follows because these cases deal with the Court's assessment of the risk at the outset of the traffic stop.

This point is well made when one reckons with the following quote from **Wilson**. There the Court wrote "that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for speeding, but from the fact that evidence of a more serious crime might be uncovered during the stop" (**id., 519 U.S., at 414**).

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

At the heart of the various arguments made below is the undisguised belief that the officers who testified seem clearly to have been guilty of what some officers have characterized as "testilying".[6] This thesis centralizes the contention that a most brazen segment of officer Adkins' evidence was cleverly created by the government in a calculated effort to deal with an impossible segment of Adkins' testimony. Simply put, although (as shown by **Defense Exhibit "D"**), the distance

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[6] Officer Potchatek, of course, is one of officers here being referred to, and nothing he said tells us how he came to know Robinson "did not have his driver's license on him" (**ibid**). The point here being, Potchatek had to have been given this asserted explanation by Adkins after the fact of Robinson's arrest, and indeed after Robinson's actual incarceration, and apparently sometime after Adkins returned from the hospital.

from Northfield to upper Chapman (*i.e.,* the distance on Euclid involved between the turn from Northfield and then onto upper Chapman) was too short to accommodate the police car being behind Robinson's car long enough to see it had a temporary license plate and still almost be hit by Robinson's car as (or before) it made the turn onto Chapman.

Also it seems clear enough from the close comparisons made between the testimony rendered by the two police officers, and certain other indisputable facts, and the laws of nature, that clearly the trial Court's critical finding cannot survive meaningful scrutiny and for that reason is, and was, clearly erroneous. Here reference is to the following precise holding by the Court:

> ... this Court finds by a preponderance of the evidence that *the police officers are being truthful*, that they do not have a motivation to lie in this case, and that it is the defendant who has the motivation to lie, and it is the defendant who is not being truthful.
>
> This Court specifically finds that the stop was lawful because of the traffic violations as enunciated by Officer Adkins, and corroborated by Officer Potchatek.
>
> THE WITNESS: Yes.
>
> THE COURT: This Court finds that the detention, therefore, was lawful due to the lack of the production of the driver's license. This Court finds that the arrest was therefore lawful due to the actions of the defendant. And the Court further finds that the towing of the vehicle and the inventory of the vehicle was lawful, and consequently, the drugs and the weapon will not be suppressed, and the defendant's motion to suppress those items is denied.

> Regarding the motion to suppress the oral statement made to Officer Lucarelli, this Court is desirous of further briefing on that issue.... **Tr., pp. 127-128.**

Given the impossibility of the finding that both of these officers were "truthful" **(ibid)**, that they had no reason to lie (arguably because of a lack of interest in the outcome of the case), and that the defendant was not truthful because he had a motive to lie, the arguments made below, if nothing else, show the Court's findings, quoted above, were clearly erroneous. Indeed, they should be summarily rejected.

In our judgment, and for what it is worth, the trial Court's opinion tends to show more of a penchant to gospelize the testimony of the police officers than to reckon with a point well made by the Court in **Hayes v. Florida, 470 U.S. 811 (1985)**. There the Court wrote, and this seems especially apt here (since the point made is indisputable) that:

> ... [P]olice procedures can "qualitatively and quantitatively be so intrusive with respect to ... [one's] privacy interest as to trigger the full protection of the Fourth and Fourteenth Amendments.

Id., at pp. 815-816.

The point of all this is that clearly officer Adkins was bent on making an example of Carlton Robinson. And this because it was a slow night for these officers. This follows since all of the police cars on the street that night responded to this scene, where the proof shows Petitioner was not even accused of hitting anyone and was compelled to submit to the abuse visited on him alone.

Obviously the flawed tactics used by the police made it imperative that they needed to cover up their misdeed by resorting to the type of improvised evidence submitted to the trial Judge.

I. GRANTED DEFERENCE MUST BE GIVEN TO FACTUAL FINDINGS MADE BY THE TRIAL COURT, BUT SUCH DEFERENCE IS NOT BOUNDLESS AND WHERE, THE EVIDENCE SHOWS PROBABLE CAUSE DID NOT EXIST FOR THE TRAFFIC STOP, THE EXCLUSIONARY RULE IS APPLICABLE.

One of the dispositive questions here asks whether it was shown the officer's motivation for stopping a motorist was based on a racial pretext (**Defense Counsel, at Tr., p. 117**). Granted the government's response will be typical. Counsel will surely contend (as they always do) that actions of the accused created the reasons for the search. Our point being, counsel-opposite will not address the fact that officer Adkins forthrightly stated that he had no reason to believe the Petitioner was armed and dangerous (**Adkins, at Tr., pp. 31-32**). Simply put, this compelling testimony could only mean the officers lacked a *reasonable* fear for their safety.

Now we recognize, as do most police officers, that in assessing a fourth amendment challenge made against a search, the Court considers the reasonableness of the individual officer's conduct, rather than his subjective motivations. Here the law is clear. See **Whren v. United States, 517 U.S. 806 (1996)**.

In this regard the Court must address a question directed to one of these officers during his testimony:

> Q. But Adkins had told you that the offense that was committed was a failure to signal for a right turn going onto Chapman?
>
> A. Correct.
>
> Q. Right. So that that's a minor traffic violation, isn't it, failure to give a signal when you turn....?

A. Correct.

Q. And certainly if he had a driver's license, all that would have happened would have been they would have plugged it into the computer, found out it was owned by Action Motors, ... and he had paperwork showing that's who sold it to him, and he had a 30-day tag which tells you that the official title simply hasn't been issued. That's what that tells you, isn't it?

A. Uh-huh.

Q. *And you can put his name and Social Security Number into the system, and it would have come back whether or not he had a driver's license*?

A. *Correct.*

Q. Right. *So all that he was facing was a ticket for a very minor traffic offense for which he couldn't even be arrested. You knew that, didn't you*?

A. *Yes.*

Q. Yes. So you're saying that although the defendant had been told that he was going to get a ticket for a traffic signal violation, and the defendant knew that he had a driver's license as was verified by the police, and he had all the paperwork relative to the car, *you said the defendant felt he was going back to prison because he had a traffic violation*?

A. I cannot say what the driver felt at that time. *What I can say is he did not have his driver's license on him, and for officer safety is why Patrolman Adkins brought him back to the vehicle.* He had no identification on him as to who he was.

Tr., pp. 109-110. (Emphasis supplied.)

One does not have to be perceptive to wonder what possessed this witness to testify, as he did, that Robinson "did not have his driver's license on him and [that it was] for *officer safety* ... that patrolman Adkins brought him back to the vehicle" (**ibid**). This follows since Adkins was credited by this officer with not having even asked for the driver's license, or even having said anything before he took Robinson out of his car. The point being, how could this officer know (as he says was the case) that Robinson did not have any identification on him? This is especially so since we do know that the license was in fact inside the car before, when, and after, Robinson was forcibly removed therefrom.

Here, of course, it should be understood that even if it is somehow concluded that the Petitioner committed the traffic offense for which he was arrested, *i.e.,* failing to signal a turn (an offense for which no arrest under the circumstances here could be made), our contention is that Petitioner was nonetheless arrested. The arrest here can be likened to the arrest said to have occurred in **Florida v. Royer, 460 U.S. 491 (1983)**, where the Court concluded an arrest occurred when Royer was led off to a special room for purposes that cannot be distinguished from the reasons the officer had in mind when he removed Robinson from the car.

Here the law is clear, an officer has probable cause to arrest only when the totality of the facts and the circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient for a prudent person to believe the targeted person had committed, or was committing, a crime. See **Beck v. Ohio, 379 U.S. 89 (1964)**.

Here it seems clear there was no basis for the arrest that was actually made. But even this is not all. The government did not make a case for any lawful detention of the type allowed under **Terry v. Ohio, 392 U.S. 1 (1968)**. Here, of course, the

Record is clear, Robinson testified that the officer, as soon as he arrived at the side of the car, ordered him to get out and started him toward the police cruiser. This is significant because if this were a safety move, and officer Adkins never said it was, it seems clear he would have at the very least given Robinson a pat-down search. When this fact is coupled with officer Adkins' failure to even question Robinson as to whether there were any guns in his car, it belies any contention (that will be made for the first time in the government's Brief) that Adkins was concerned for his safety.

What surfaces, of course, is the obvious. This officer fully intended at all times to search this car. Here too, since he extolled the fact that he was a training officer (**Tr., p. 3**), and functioned at times as a supervisor, he must be credited with being aware of the position taken by the Supreme Court of Ohio in **State v. Jones, 88 Ohio St. 3d 431 (2000)**. There the Court held that "a full custodial arrest for a minor misdemeanor offense violates the Fourth Amendment." Indeed in making its point the Court aptly concluded "the officer ... violated Ohio law when he arrested..." **(id., at p. 435)** for a seat belt charge.

A. Given the presumption of unreasonableness of all warrantless arrests, and given the fact that hunches are insufficient to establish, either, probable cause or a reasonable suspicion sufficient to justify an investigative stop, the government's failure to justify the arrest made here of the defendant cannot survive meaningful scrutiny.

The critical facts here show Carlton Robinson, who was said to have made a right turn from a thoroughfare onto a side street without having first signaled the turn was about to be made, was "brought back to the [police] vehicle," in the manner that he has asserted, "for officer's safety" **(Tr., pp. 109-110)**. What is indeed a matter of critical importance here is the fact,

indisputable in our judgment, that Robinson was placed under arrest at the point he was taken out of his car. This is a crucial fact because, if this is so, then clearly the finding of the contraband in the Petitioner's car must be viewed as a product of an illegal arrest and for that reason alone excluded as evidence.

Postured by the tenets that distill from **Terry v. Ohio, 392 U.S. 1 (1968)** and its progeny, one must reckon with the fact that although all the papers necessary for lawfully operating a car on public streets were possessed by the Petitioner, the officer opted not to allow the occupant to locate and display them. As the Record here shows that although officer Adkins lacked any reason for doing so, he took Carlton Robinson from the car with the full intent of locking him in the police cruiser for reasons that must be deemed to have been ulterior - - that is, so as to permit the officers to search the vehicle itself.

Our point is that the officer's actions were pretextual, and his testimony as to the asserted justifications for such actions inexorably distill from an analysis of certain basic tenets. We start with the well known fact that the reasonableness of an officer's conduct is fact-specific. **Robinette v. Ohio, 519 U.S. 33, at 39 (1996)**. Indeed reasonableness in this context depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." **United States v. Brignoni-Ponce, 422 U.S. 837, at 878 (1975)**.

Under this framework it is conceded that officers conducting these traffic stops have every right to take such steps as [are] necessary to protect their personal safety." **United States v. Hensley, 469 U.S. 221, at 235 (1985)**. And to this end they may order the driver, and even his passenger, out of the car. Indeed they can even perform *Terry* pat-down searches of the car's occupants "upon reasonable suspicion they

may be armed and dangerous." See **Knowles v. Iowa, 525 U.S. 113, at 117-18 (1998)**. Here it is worth repeating the government is yet to argue officer Adkins reasonably suspected Carlton Robinson was armed and dangerous.

The most we have here is officer Potchatek's testimony that Robinson was removed from the car and was being brought back to the police car for the officers' safety. **(Tr., pp. 110-11.)** Clearly if this is so the facts here do not support any implicit finding that officer Adkins' actions in taking Robinson out of the car and marching him to the police car, where he would be locked in, was a safety measure.

Simply put, a critical question here seems clearly to be that given the absence of any proof the officer believed Petitioner was armed and dangerous (which would have triggered those measures an officer can rely on to "protect themselves from danger" **[Knowles, 525 U.S., at 117]**), can it be said the officer's actions did not amount to an arrest - - for which probable cause was required? In our judgment, because of the purposefulness and the flagrancy of officer Adkins' unlawful conduct in making this arrest, everything that happened after that must be deemed fruit of the poisonous tree.

Our points here, with reference to the contention that the actions of officer Adkins show that, whether intended or not, he actually arrested Robinson when he removed him from the car and from the site of the traffic offense for reasons that were not shown to be related to his safety. Indeed, we will have to await the government's response to understand how they can overcome the position taken in **Dunaway v. New York, 439 U.S. 979 (1979)**.

B. Under the law of Ohio an officer, even when he has probable cause to believe an individual has committed a minor misdemeanor offense (for which

no jail term is possible), cannot summarily make a custodial arrest.

Here the law of Ohio is clear enough. It is only under certain circumstances that a police officer can arrest for a minor misdemeanor. See **R.C. of Ohio, §2935.36**. Indeed the Ohio Supreme Court has expressly held that "a full custodial arrest for a minor misdemeanor offense violates the fourth amendment to the United States Constitution." **State v. Jones, 88 Ohio St. 3d 431 (2000)**. Given that the offenses for which officer Adkins says he arrested the Petitioner (and we know he was not precise as to the particular offense),[7] were clearly minor misdemeanor traffic offenses, it follows the arrest was illegal when it was originally consummated. Indeed the words of the Supreme Court, extracted from **State v. Jones**, really makes the point for us. Here the Court wrote that the "officer ... violated Ohio law when he arrested ... [Jones for a minor misdemeanor]." **(Id., 88 Ohio St. 3d, at 434.)**

The cogency of our reliance on **State v. Jones** is further made all the more compelling when it is fully realized that Carlton Robinson was summarily arrested although it is clear he had done nothing that justified his being manhandled after he was ordered out of the car. Now we do concede the police certainly have the power to order a motorist from the car. Indeed **Pennsylvania v. Mimms, 434 U.S. 106 (1977)** and **Maryland v. Wilson, 519 U.S. 408 (1997)**, make this point.

Here it is significant that in addition to officer Adkins' testimony that he had no reason to believe Carlton Robinson

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[7] In his testimony this officer, doubtless because such things are routinely done by police officers, could not resist further embellishing what was said in his original report to be the basis for the arrest. There he had written the stop was based, for aught that appears, solely on the asserted failure to signal the turn onto Chapman (**Tr., p. 39**).

was armed and dangerous (**Tr., pp. 31-32**), he fully realized the offenses involved were very minor. **(Id., at pp. 30-34.)**

Now we are also keenly aware of **Atwater v. City of Lago Vista, 532 U.S. 318 (2001)**. It is cited here in anticipation of any possible argument the government may make to the effect that this case compels the conclusion the arrest here, regardless of the point it occurred, did not violate the fourth amendment. Indeed we fully recognize **Atwater** as holding that "if an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the fourth amendment, arrest the offender". **532 U.S. 318, 121 S. Ct., at 1557**.

Given this holding, the government could very well make an attempt to seize on the flawed fact that although the asserted traffic offenses for which the Petitioner was arrested were indeed minor, in their judgment the officer's power to arrest was properly exercised. The problem with any such argument is that it overlooks the fact that unlike the law in Texas (where Atwater had its genesis), in Ohio a custodial arrest cannot routinely be made for a minor misdemeanor.

We also recognize that the right to make an arrest, or even an investigative stop, necessarily carries with it the right to use some degree of physical coercion or the threat thereof to effect it. **Terry v. Ohio, 392 U.S. 1, at 22-27 (1968)**. But even here the Supreme Court has sought to make it clear that in balancing any necessity for the use of force, such as was used here, against the rights of the person being arrested, there are certain critical factors that must be evaluated. These include the severity of the crime involved, whether the arrestee posed an immediate threat to the safety of the officers or others, and whether he was actively resisting arrest or attempting to evade arrest by flight before the force was used. **Graham v. Conner, 490 U.S. 386, at 396-97 (1989)**.

A critical point, one worthy of comment here, is the fact that it has been recognized that "the threat to officers' safety from issuing a traffic citation ... is a good deal less than in the case of a custodial arrest." **Knowles v. Iowa, 525 U.S. 113, at 117 (1998)**. The point being it is beyond dispute that the relative weight of the interest in the officers' safety will always depend upon the particular circumstances of the case. In this case, however, while we concede any traffic violation, no matter how minor, creates probable cause to stop the vehicle, it does not create probable cause to arrest the driver - - at least not in Ohio.

Also, it could not be any clearer that any actions taken against the stopped motorist, beyond that authorized by the applicable State statutes on the basis of which the stop was made, or that was strictly related to safety considerations (for the officers and the motorist) must be deemed arbitrary and/or ulterior. For example, if the officer comes to the conclusion that the motorist arguably fits his profile of a drug dealer and this fact controlled and dominated the officer's decision to remove the motorist from the car and from the site of the stop, then clearly the officer's conduct is not only indefensible, it also translates into an arrest for which probable cause was required.

Since Ohio forbids arrest for these minor traffic offenses, it follows the government was required to prove justification for this arrest existed. And, this the government failed to do. Stated another way, since nothing was shown to have occurred here following the stop, it follows that the failure of the government to even attempt to justify this arrest, at the point it occurred, and the trial Court's failure to expressly determine what she regarded as the justification for the immediate arrest of this motorist, especially in light of **State v. Jones, supra** (which was called to her attention), is really dispositive.

II. WHERE, DESPITE THE FACT THAT THE ALLEGED TRAFFIC OFFENSE SUPPOSEDLY OBSERVED BY THE OFFICERS COULD NOT POSSIBLY HAVE OCCURRED AS DESCRIBED, A REVIEWING COURT CANNOT, WITH IMPUNITY, IGNORE THIS REALITY.

Given that on appeal from the denial of a Motion to Suppress, **Ornelas v. United States, 517 U.S. 960 (1996)**, requires that the review must be *de novo*, it follows that where, as here, the testimony rendered by the officers cannot be squared with the laws of nature and their testimony is disputed by certain unchallengeable facts, augmented by testimony rendered by the accused, the reviewing court is barred from arbitrarily crediting the officer's testimony. And, this simply because it supports the resolution under challenge. The reference here is to the statement in the Opinion that "the testimony of the officers' was consistent in all relevant respects" (**Opinion, p. 5**). The problem, of course, is the Court did not identify what it was talking about the statement "all relevant respects." This is significant because the conflicts placed before them dealt with whether or not the traffic offense, as described, could have even possibly occurred. This is important because Petitioner's version of the stop, showed conclusively it lacked a factual basis to fit within the geography involved. Thus, it was not possible the events could have even happened as they were said to have by either officer in their conflicting and irreconcilable versions.

Now, in this case, it is worth repeating, the testimony and the exhibits showed that it was impossible for any motorist to have negotiated the car movements attributed to Petitioner within the very short distances between the streets denominated as being involved in the turns made, *i.e.*, a left turn onto one street (Euclid Avenue) *then* an immediate right turn onto the next street (here, Chapman). This is especially so since it was impossible for him to have reached the speed indicated in the

"fast" lane as the Opinion notes **(ibid)**, before the immediate right turn was made during which the car almost hit the highly visible police cruiser. The ridiculousity of this thesis is such that to accept it would require us to believe the assailed movements of Petitioner's car could have been made despite the fact that the car's travel commenced from a dead stop. The stop was made before the very first turn. Thus, the Court summarily rejected Carlton Robinson's testimony that he saw the officer's police cruiser emerge onto Euclid Avenue from a street west of Euclid Avenue when he (Robinson) almost simultaneously turned to this same street. The point being, there is no way Robinson's car interfered with the travel of the police cruiser.

CONCLUSION

As argued, and as shown elsewhere, the unbelievability of the testimony provided by officer Adkins validates a point well made more than fifty years ago when the Court noted that "... power is a heady thing; and history shows that the police acting on their own cannot be trusted." **United States v. McDonald, 335 U.S. 451, at 455-56 (1948)**. While this is certainly true, this case points up the extreme reluctance most of our local Judges have for rejecting any aspect of the testimony the police officers around here. This is so even when the officer's testimony is in irreconcilable conflict with the testimony of all the other witnesses whose testimony bears on the dispositive issues. And, it is also in conflict when the officers testified to scenarios that could not even possibly have occurred - - also the situation here.

On the other hand, only one who is totally oblivious to the recent publicity disclosures that have exposed the tactics of certain officers on the police departments in Los Angeles, New York City, Chicago, Detroit and other cities. Indeed in one

report of a Commission that studied allegations of false testimony by New York policemen, it was concluded:

> The Commission also found that many police officers did not consider giving false testimony as a form of "corruption" which they believed implies personal profit. Instead, they viewed "*testilying*" as just another way to get the job done.

Mollen Report, Vol. 5 (1994). *See also* **Joe Sexton, *New York Police Lie Under Oath, Report Says,* N.Y. Times, April 22, 1994; *Corruption in Uniform: Excerpts of What the Commission Found: Loyalty Over Integrity,* N.Y. Times, July 7, 1994**. Cf., **State v. Hunt, 22 Ohio App. 3d 43 (1984)** and **State v. Dodson, 43 Ohio App. 31 (1974)**. In both **Hunt** and **Dodson**, despite the flagrancy of what was shown to be *lies* told by the police (the affiant in **Hunt** and a police captain in **Dodson**) our local Court nonetheless validated both searches.

The bottom line here, once we give any credence to the fact that police officers do lie, based on their interest in the outcomes of their cases, **United States v. Bufalino, 683 F.2d 639 (2d Cir. 1982)**, one cannot simply ignore certain unchallengeable showings made here. Simply put, they distill into the insuperable fact that: given the distances involved between Northfield and upper Chapman, there is absolutely no way any one should believe, hence, could with impunity credit Adkins' testimony, that these events occurred as described by him. Even this is not all. This particular version conflicts with what was provided in the other versions supplied by officer Adkins. In one version he puts Robinson's car in front of the police car, which was far enough in front to enable Adkins to see the car had 30 day license plates (**Tr., pp. 22-28**). In another version, Robinson's car *overtook* their police car and then turned onto Chapman (**id., pp. 41-42**). And, in still

another version, Robinson's car came within a foot of hitting their police car **(id., pp. 6 and 28)**, which was in the curb lane.

The weight of the interest in officer safety should vary depending upon the particular circumstances of the case. In this regard it only makes sense, as the court held in **Knowles, 525 U.S. at 117 (1998)**, that the threat to officer safety from issuing a traffic citation is a good deal less than in the case of a "custodial arrest" **(id., at p. 117)**.

This analysis points up the fact that although the Supreme Court has held it is permissible to conduct what has been said to be a "Terry pat down" of the interior of a vehicle stopped for a traffic offense, what is required is that the officer must have a reasonable suspicion that the driver was dangerous and might gain control of a weapon. **Michigan v. Long, 463 U.S. 1032, at 1049 (1983)**.

What makes our point here all the more compelling is that *if* the driver (once he is removed from his car) did not possess any privacy rights whatsoever therein, presumably the Supreme Court would not have imposed, in **Long**, the reasonable suspicion requirement on the police. Indeed, they would have expressly allowed such conduct as was visited on Robinson (insofar as his removal from the car and his removal from the site of the stop) to occur as a matter of course in all traffic stops.

What all this makes clear is that the trial Court's rote determinations, upon which the government must rely, seem clearly to be out of step with reality. Stated another way, to borrow what was said by one Court in a different context, cases must be decided on the basis of the facts. Here it seems the trial Court announced rulings on Fourth Amendment issues that are clearly in search of facts to justify it. Surely this Court can see through this rationale, which counsel labels as flawed and unacceptable.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 02-3520

[Filed October 17, 2003]

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

CARLTON D. ROBINSON, Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Ohio
No. 01-00528
Gaughan 04-25-02

JUDGES: BEFORE: KEITH, SUHRHEINRICH and CLAY, Circuit Judges.

OPINION

CLAY, Circuit Judge. Defendant Carlton D. Robinson appeals from his judgment of conviction and sentence, entered by the United States District Court for the Northern District of Ohio on May 1, 2002. Specifically, Defendant was convicted

of possession of crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A), and being a felon in possession of a firearm, in violation of 18 U.S.C. § 922 (g)(1). We **AFFIRM** the district court's judgment for the reasons discussed below.

The conviction was rendered pursuant to Defendant's conditional guilty plea on both counts, and Defendant was sentenced to 262 months imprisonment. Defendant argues on appeal that the district court erred in denying his motion to suppress evidence discovered during a search pursuant to his arrest because the traffic stop of Defendant's car, and Defendant's subsequent arrest, occurred in violation of his Fourth Amendment rights, and thus the fruits of the search conducted pursuant to that unlawful arrest should have been suppressed.

I. FACTS

The record reflects that on October 25, 2001, East Cleveland Police Officer Phillip Adkins and Officer Ken Potchatek (at the time an applicant for the East Cleveland Police Department) were driving in a police cruiser on Euclid Avenue in the city of East Cleveland during a twelve-hour shift. At 1:57 a.m. the officers observed Defendant's vehicle make a left turn onto Euclid Avenue, then make a right turn onto nearby Chapman Avenue. According to the testimony of both Officers Adkins and Potchatek, Defendant committed two moving violations in making the right turn, to wit, turning right from the "fast" lane, and failing to use a turn signal in doing so. Officer Adkins pulled Defendant over and requested his driver's license. According to Adkins, Defendant informed him that he did not have the license with him and then proceeded to engage in various "furtive movements." Officer Adkins testified that, upon viewing these furtive movements, he decided to have Defendant exit the vehicle and to place him in

the back of the police cruiser for "identification and safety purposes." As Officer Adkins and Defendant walked back toward the cruiser, Defendant attempted to escape, and a struggle ensued between the two, during which Adkins, Potchatek, and other officers whom Adkins had summoned to the scene used pepper spray on Defendant and placed him under arrest. Following Defendant's arrest, officers of the East Cleveland Police Department conducted an inventory search of his vehicle. The search revealed a red hat on the driver's seat, containing some plastic bags filled with crack cocaine, as well as a loaded firearm.

On November 20, 2001, Defendant was indicted on two counts: possession with intent to distribute more than 50 grams of crack cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A), and possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). Defendant filed a motion to suppress the evidence of the crack cocaine, claiming that it was obtained in violation of his Fourth Amendment rights. Pursuant to Defendant's motion, the district court held a suppression hearing. Both Officers Adkins and Potchatek testified, in pertinent part, that they stopped Defendant's vehicle because of traffic infractions committed while making the right turn from Euclid Avenue onto Chapman Avenue; that Officer Adkins had Defendant exit his vehicle because of his failure to produce a driver's license and his furtive movements; and that Defendant attempted to escape, resulting in the calling of backup assistance and Defendant's arrest. Defendant also testified and denied having committed any traffic violations before the police pulled him over. He also testified that Officer Adkins, upon approaching the vehicle, did not ask Defendant for any identification, but instead grabbed his sweatshirt hood and demanded that he exit the car. According to Defendant, as they proceeded toward the police cruiser, Adkins and Potchatek pushed him to the ground, "maced" him, and handcuffed him.

At the conclusion of the hearing, the district court credited the testimony of Officers Adkins and Potchatek over the testimony of Defendant. Based on its credibility determination, the district court concluded that the officers had a valid basis for the traffic stop, as well as for the subsequent detention and arrest of Defendant, and that no Fourth Amendment violations had occurred. The district court therefore denied Defendant's motion to suppress. Defendant thereafter entered a conditional guilty plea to Counts 1 and 2 of the Indictment, but he reserved his right to appeal the district court's denial of his motion to suppress. The district court sentenced Defendant, in accordance with the plea agreement and the presentence report, to 262 months imprisonment, and judgment was entered to that effect on May 1, 2002. This timely appeal followed.

II. ANALYSIS

When reviewing a district court's denial of a defendant's motion to suppress evidence, we "review[] the district court's factual findings for clear error and its legal conclusions *de novo*." *United States v. Pollard*, 215 F.3d 643, 646 (6th Cir. 2000). "In reviewing the court's factual findings, we will consider 'the evidence in the light most likely to support the district court's decision.'" *United States v. Guimond*, 116 F.3d 166, 169 (6th Cir. 1997) (*quoting United States v. Roark*, 36 F.3d 14, 16 (6th Cir. 1994) (internal quotations omitted)). Moreover, we accord great deference to a district court's credibility determinations. *United States v. Navarro-Camacho*, 186 F.3d 701, 705 (6th Cir. 1999) (*citing United States v. Cooke*, 915 F.2d 250, 252 (6th Cir. 1990)).

Defendant argues on appeal that the district court erred in denying his suppression motion because neither the stop of Defendant's vehicle nor his subsequent detention passed constitutional muster under the Fourth Amendment's requirements. As for the stop of the vehicle, Defendant argues

that the district court's decision to credit the officers' testimony was clearly erroneous given the contradictions in their testimony. Defendant further argues that, based on Ohio law, his arrest for a minor traffic offense was invalid. Therefore, Defendant concludes, the search conducted pursuant to his arrest violated the Fourth Amendment, and the evidence found during that search should have been suppressed.

Based on our review of the record, the testimony of the officers was consistent in all relevant respects. Therefore, we do not believe the district court clearly erred in crediting the testimony of the officers over the testimony of Defendant, particularly given the great deference to be afforded that credibility determination. *Navarro-Camacho*, 186 F.3d at 705.

According to the testimony of Officers Adkins and Potchatek, Defendant committed two moving violations when turning right onto Chapman Avenue. Police officers may, consistent with the Fourth Amendment's requirements, stop vehicles for observed violations of traffic laws. *See, e.g., Pennsylvania v. Mimms*, 434 U.S. 106, 109, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977) (holding that a traffic stop was proper because the vehicle in question bore "expired tags in violation of the [law]"); *United States v. Johnson*, 242 F.3d 707, 710 (6th Cir. 2001) (holding that traffic stop for a broken tail light did not violate the Fourth Amendment). We therefore find that the traffic stop of Defendant's vehicle was proper.

Defendant also argues that his failure to present his driver's license to Officer Adkins did not entitle Officer Adkins to arrest him, citing Ohio statutory and case law for the proposition that an officer can only make arrests for minor misdemeanors under certain circumstances. *See* OHIO REV. CODE § 2935.26 (discussing circumstances under which an arrest for a minor misdemeanor is permitted); *State v. DiGiorgio*, 117 Ohio App. 3d 67, 689 N.E.2d 1018 (Ohio Ct.

App. 1996) (holding that a failure to produce a license is not a first-class misdemeanor entitling an officer to make an arrest); *State v. Mason*, 115 Ohio App. 3d 187, 684 N.E.2d 1294 (Ohio Ct. App. 1996) (same).

However, we do not believe that an arrest initially occurred in this case. Under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the police may stop an individual if, at the time of the stop, there exists sufficient reasonable suspicion that the individual is engaged in criminal activity. *United States v. Hurst*, 228 F.3d 751, 756-57 (6th Cir. 2000). This seizure of a suspect by the police may only be for a brief time period and limited scope; the police officer may ask a moderate number of questions to determine the suspect's identity and to try to obtain information confirming or dispelling the officer's suspicions. *United States v. Fountain*, 2 F.3d 656, 664 (6th Cir. 1993) (*quoting Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)). Moreover, the degree of force utilized by officers during a detention must be "reasonably related in scope to the situation at hand" and not "so intrusive as to constitute an arrest." *United States v. Hardnett*, 804 F.2d 353, 356-57 (6th Cir. 1986).

We have interpreted "reasonable under the circumstances" to mean that highly intrusive conduct is acceptable if deemed necessary to effectuate the stop of a suspect. *See United States v. Heath*, 259 F.3d 522, 522-26, 530 (6th Cir. 2001) (holding that the police officers' conduct, which included blocking the defendant's car, approaching with guns drawn, pulling the defendant from the car and wedging him between the car door and the body of the car, and frisking and handcuffing him, "did not rise to the level of an arrest"); *Houston v. Clark County Sheriff Deputy John Does 1-5*, 174 F.3d 809, 815 (6th Cir. 1999) (holding that the use of handcuffs in itself does not exceed the bounds of a *Terry* stop); *United States v. Critton*, 43 F.3d 1089, 1092-94 (6th Cir. 1995) (holding that a detention in

a police cruiser does not automatically transform a *Terry* stop into an arrest); *Hardnett*, 804 F.2d at 357 (holding that blocking a suspect's car and approaching the suspect with a firearm drawn was reasonable where the officer had reason to believe the suspect was armed).

According to Officer Adkins, Defendant did not have his driver's license and he began making furtive movements, and Officer Adkins therefore asked Defendant to accompany him to his police vehicle for "safety and identification purposes." Removing Defendant from his vehicle was "reasonably related in scope to the situation at hand," *Hardnett*, 804 F.2d at 356-57, and it did not constitute an arrest for purposes of the Fourth Amendment inquiry. Defendant's subsequent arrest only occurred because, based on the testimony of Officer Adkins and Potchatek, he attempted to flee the scene. Therefore, Defendant's argument lacks merit.

III. CONCLUSION

We conclude that the district court did not clearly err in crediting Officers Adkins and Potchatek's testimony. Moreover, the traffic stop was legal based on Defendant's moving violations; the extended detention and removal of Defendant from the vehicle was legal based on Defendant's failure to produce a driver's license; the arrest was legal based on Defendant's attempt to flee; and the search was legal because it was conducted pursuant to the valid arrest. Because no Fourth Amendment violations occurred, the district court correctly denied Defendant's suppression motion. Accordingly, we **AFFIRM** the judgment of the district court.